

EXHIBIT A

Texas, 77057, and am counsel for Defendant in this case. A true and correct copy of my resume is attached hereto.

3. By virtue of my professional education, training, experience and background, I have specialized knowledge regarding litigation in Texas trial and appellate courts, both state and federal. Consistent with my specialized knowledge, I am aware of the time and labor required to defend against lawsuits such as this one, the novelty and difficulty of the questions involved in this case, the skill required to properly perform the legal services to zealously defend my client, and the fee customarily charged in the locality for similar legal services. Further, I have personal knowledge regarding the potential damages amounts involved and the results obtained, the time limitations imposed by the client and by the circumstances, the nature and length of the professional relationship with the client, and the experience, reputation and ability of the lawyers performing the services. My opinions below are all made consistent with these standards and are based on my professional education, training, experience, background, specialized knowledge and expertise.
4. The hourly rates charged by Feldman, Rogers, Morris & Grover, L.L.P. for the defense of this case are: \$240 for partners and \$185 for associates. In my expert opinion, these hourly rates are at or below the usual and customary attorney's fee rates and are reasonable in this case.
5. In March 2009, Plaintiffs' counsel requested the depositions of Defendants' expert witnesses, Dr. Milton Moore and Robert Brennan. I advised counsel for the Plaintiffs' that Defendants would present Dr. Moore and Mr. Brennan for deposition so long as Plaintiffs agreed to pay the costs associate with the depositions as provided by the Federal Rules of Civil Procedure. *See* Correspondence dated March 5, 2009 attached as Exh. A-1. Plaintiffs' counsel agreed to pay the deposition costs by email dated March 19, 2009. *See* email

correspondence dated March 19, 2009 attached as Exh. A-2.

6. Accordingly, the deposition were scheduled and taken. Subsequently, Defendants received an invoice for the costs associated with the deposition of Dr. Moore. *See* Invoice attached as Exh. A-3. The total costs related to Dr. Moore's deposition were \$4800. *Id.* Defendants also received an invoice from Mr. Brennan demonstrating that the total costs related to his deposition were \$1,469. *See* Invoice attached as Exh. A-4.
7. By letters dated May 19, 2009 and May 29, 2009, respectively, I forwarded the invoices to counsel for the Plaintiffs and requested payment. *See* Correspondence dated May 19, 2009 and May 29, 2009 attached as Exh. A-5. Plaintiffs failed to pay the invoices and on June 16, 2009, I sent a letter requesting payment within thirty (30) days; Plaintiffs still failed to pay. *See* Correspondence dated June 16, 2009 attached as Exh. A-6.
8. As of today's date, in spite of their obligation under the Federal Rules of Civil Procedure and their own agreement, Plaintiffs have failed to pay these invoices. Accordingly, Defendants now seek the Court's intervention.
9. I have personal knowledge of the time spent in the preparation of Defendants' Motion to Assess Additional Costs and Limited Application for Attorneys' Fees. To date Defendant has incurred approximately \$500 in preparation of Defendants' Motion to Assess Additional Costs and Limited Application for Attorneys' Fees.
10. Attached to this affidavit are true and correct copies of:

Exh. A-1: Correspondence dated March 5, 2009

Exh. A-2: Email correspondence dated March 19, 2009

Exh. A-3: Invoice

Exh. A-4: Invoice

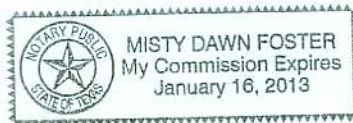
Exh. A-5: Correspondence dated May 19, 2009 & May 29, 2009

Exh. A-6: Correspondence dated June 16, 2009

FURTHER AFFIANT SAITH NOT.


CLAY T. GROVER

Subscribed and sworn to before me, the undersigned authority, this the 23rd day of September, 2009.




Notary Public in and for the State of Texas

EXHIBIT A-1



FELDMAN ROGERS

FELDMAN, ROGERS, MORRIS & GROVER, L.L.P.
ATTORNEYS AT LAW

5718 WESTHEIMER ROAD, SUITE 1200
HOUSTON, TEXAS 77057
PHONE: (713) 960-6000 • FAX: (713) 960-6025
www.feldmanrogers.com

CLAY T. GROVER
Direct Dial: (713) 960-6033
cgrover@feldmanrogers.com

March 5, 2009

Via Facsimile 713/429-4121 & email

Mr. Warren M. Fitzgerald, Jr.
Attorney at Law
6415 W. Montgomery
Houston, Texas 77091

Re: C.A. No. 4:07-cv-04021; *Shelby Stewart, Kenneth Perkins, Adrian Wright, and Raul Collins v. City of Houston and Harold Hurtt*, In the United States District Court for the Southern District of Texas, Houston Division.

Dear Mr. Fitzgerald:

I am in receipt of your letter requesting the depositions of Chief Hurtt, Chief King, Captain Holloway, and Defendants' expert witnesses. I will contact you in the near future to provide you with dates and times when the Houston Police Department witnesses may appear for deposition.

As to Defendants' expert witnesses, Dr. Moore and Mr. Brennan, as you know, the Federal Rules of Civil Procedure provide that the party seeking the deposition of a retained testifying expert will pay the expert's reasonable fees for time spent in responding to deposition discovery. Fed. R. Civ. P. 26(b)(4)(C)(i). This fee ordinarily includes the expert's fees for time spent preparing for, traveling to and from, and attending the deposition. *See, e.g., Rogers v. Penland*, 232 F.R.D. 581, 582-83 (E.D. Tex. 2005). Please note that Mr. Brennan resides in Florida. Accordingly, his deposition will involve either the expense associated with travelling to Florida to take his deposition or the expense of bringing him to Houston to appear for deposition.

Before I contact my expert witnesses to arrange dates and times for their depositions please confirm that you are, in fact, agreeing to pay their reasonable

Mr. Warren M. Fitzgerald, Jr.

March 5, 2009

Page 2

expenses and fees incurred in preparing for, travelling to and from, and attending their respective depositions.

Very truly yours,

FELDMAN, ROGERS, MORRIS & GROVER, LLP



Clay T. Grover

CTG:hr
\\CIT01004\...104e

c: Mr. Athill Muhammad *Via Facsimile 713/807-8167 & email*

FELDMAN & ROGERS

FX: (713) 960-6025

**** Transmit Conf. Report ****

P.1

Mar 5 2009 15:07

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9713429412197138078167	NORMAL	5:15:07	2'06"	3	O K	

FELDMAN, ROGERS, MORRIS & GROVER, L.L.P.



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FACSIMILE TRANSMITTAL SHEET

TO:		FROM:	
Warren M. Fitzgerald, Jr. Athill Muhammad		Clay T. Grover	
COMPANY		DATE:	
		March 5, 2009	
FAX NUMBER		TOTAL NO. OF PAGES INCLUDING COVER	
713/429-4121 713/807-8167		3	
PHONE NUMBER		SENDER'S CASE MATTER NUMBER:	
		CIT01/004	
RE:		SENDER'S INITIALS:	
Stewart, et al. v. City of Houston, et al.		HB	

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ FYI

NOTES/COMMENTS

Please see attached correspondence from Mr. Grover.

**** Transmit Conf. Report ****

P.1

Mar 5 2009 16:12

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PHONE NUMBER:		SENDER'S CASE MATTER NUMBER	
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RE:		SENDER'S INITIALS	
Stewart, et al v. City of Houston, et al.		HB	

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ FYI

NOTES/COMMENTS

Please see attached correspondence from Mr. Grover.

EXHIBIT A-2

Jonathan Brush

From: Clay Grover
Sent: Thursday, March 19, 2009 9:57 AM
To: Jonathan Brush
Subject: FW: Stewart v. City of Houston

Please come discuss with me.

CLAY GROVER
Feldman, Rogers, Morris & Grover, L.L.P.
Direct: 713-960-6033
Facsimile: 713-960-6025

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-----Original Message-----

From: Wfmuhammad [mailto:wfmuhammad@me.com]
Sent: Thursday, March 19, 2009 9:46 AM
To: Clay Grover
Subject: Re: Stewart v. City of Houston

Yes we will pay the applicable costs. I'm in court this morning. Let's talk this afternoon.

Sent from my iPhone

On Mar 19, 2009, at 9:39 AM, Clay Grover <CGrover@feldmanrogers.com> wrote:

> I previously sent an email to you regarding the rule making it your
> responsibility to pay for our experts time and travel costs for
> depositions. Please confirm that you intend to pay those fees and
> expenses prior to me scheduling those depositions. Brennan lives in
> Florida. Do you intend to take his deposition here or there?
>
>
> I know the 13th works for Chief Hurtt. This is the first notice that I
> have had for Muise, so I will need to check about his availability. As
> I mentioned in my email yesterday, I have a conflict with the 9th.
>
> I will call you today to discuss.
>
> CLAY T. GROVER
> PARTNER
> FELDMAN, ROGERS, MORRIS & GROVER, L.L.P.
> 5718 WESTHEIMER ROAD, SUITE 1200
> HOUSTON, TEXAS 77057
> MAIN: 713-960-6000
> DIRECT: 713-960-6037
> FACSIMILE: 713-960-6025
> WEBSITE: www.feldmanrogers.com
>
>
> From: Warren Fitzgerald
> Date: Wed, 18 Mar 2009 23:29:17 -0500
> To: Clay Grover<CGrover@feldmanrogers.com>
> Subject: Re: Stewart v. City of Houston
>
> Clay, We would like the following dates for deposition, Terry Muise

> (March 26), Brennan (Expert) March 27, Assistant Chief V.L.King (April
> 9), Capt Holloway (April 10), Chief Hurtt (April 13). I will check
> with Officer Mickens on a date for him on tomorrow. I am scheduled to
> be out of the country from March 31-April 6, therefore I have not
> scheduled anything during that time. Let me know if this schedule
> works.

> On Mar 18, 2009, at 6:22 PM, Clay Grover wrote:

>
> Warren,
> I previously informed you that Chief Hurtt was available for
> deposition in the morning on either April 9th or April 13th. I now
> have a conflict with the 9th. Can you confirm your availability to
> take his deposition on the 13th? I want to secure the date with the
> Chief before he schedules something else for that date. Also, I found
> out today that Captain Holloway has a medical issue that needs to be
> addressed and will prevent him from being available for deposition
> until April 1. Can you let me know what dates are convenient for you
> to take his deposition in April. Finally, I need to schedule a date
> to take Officer Micken's deposition. Please let me know what dates he
> is available. Thanks.

>
>
> <image003.gif>Clay T. Grover
> ATTORNEY
> FELDMAN, ROGERS, MORRIS & GROVER, L.L.P.
> 5718 WESTHEIMER ROAD, SUITE 1200
> HOUSTON, TEXAS 77057
> MAIN: 713-960-6000
> DIRECT: 713-960-6033
> FACSIMILE: 713-960-6025
> WEBSITE: www.feldmanrogers.com<<http://www.feldmanrogers.com/>>

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> that any dissemination, distribution or copying of this communication
> is strictly prohibited.

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>
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>

EXHIBIT A-3

Invoice

Moore Unique Skin Care LLC

9350 Kirby Drive, Suite 100 D
Houston TX 77054

Date	Invoice #
5/5/2009	33682

Bill To
FELDMAN & RODGERS, LLP 5718 WESTHEIMER #1200 HOUSTON, TX 77057

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Due on receipt		5/5/2009			
Quantity	Item Code	Description			Price Each	Amount
1	50-0-10000	SERVICE FEES 1 HOUR MEETING WITH CLAY T. GROVER FOR DEPOSITION ON 4/13/09			400.00	400.00T
2	50-0-10000	SERVICE FEES 2 HOURS PREPARATION, REVIEW & RESEARCH ON 4/14/09			400.00	800.00T
6	50-0-10000	SERVICE FEES 6 HOURS DEPOSITION MEETING ON 4/15/09			600.00	3,600.00T
		SALES TAX			0.00%	0.00
</						

APPROVED
MILTON MOORE



EXHIBIT A-4

Log of activities undertaken in April 2009

DATE	START TIME	END TIME	TOTAL TIME	ACTIVITY	RATE	CHARGE	TOTAL
6-Apr-09	3:25 PM	4:04 PM	0.50	Phone call with Mr. Brush	\$110.00	\$55.00	\$55.00
7-Apr-09	4:15 PM	5:15 PM	1.00	Traveled to Mr. Brush's office	\$75.00	\$75.00	\$130.00
7-Apr-09	5:15 PM	7:15 PM	2.00	Conference with Mr. Brush.	\$110.00	\$220.00	\$350.00
7-Apr-09	6:30 PM	7:20 PM	0.80	Traveled from Mr. Brush's office	\$75.00	\$60.00	\$410.00
8-Apr-09	8:30 AM	9:30 AM	1.00	Traveled to Mr. Brush's office	\$75.00	\$75.00	\$485.00
8-Apr-09	9:30 AM	10:30 AM	1.00	Conference with Mr. Brush.	\$100.00	\$100.00	\$585.00
8-Apr-09	10:30 AM	2:30 PM	4.00	Deposition	\$200.00	\$800.00	\$1,385.00
8-Apr-09	2:30 PM	3:30 PM	1.00	Requested to wait.	\$75.00	\$75.00	\$1,460.00
8-Apr-09	3:30 PM	4:20 PM	0.80	Traveled from Mr. Brush's office	\$75.00	\$60.00	\$1,520.00
Total Time in Apr. 2009			12.10	Total Compensation for time in Apr. 2009			\$1,520.00
Expenses in Apr.. 2009			Mileage to and from Mr. Brush's office =21 miles 21 miles X 4= 48 miles total.@ \$0.50 per mile. 21 miles X 4=84 miles			\$0.50 per mile	\$24.00
Total Compensation and Expernses for Apr. 2009							\$1,544.00

EXHIBIT A-5



FELDMAN ROGERS

FELDMAN, ROGERS, MORRIS & GROVER, L.L.P.
ATTORNEYS AT LAW

5718 WESTHEIMER ROAD, SUITE 1200
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www.feldmanrogers.com

CLAY T. GROVER
Direct Dial: (713) 960-6033
cgrover@feldmanrogers.com

May 19, 2009

Via facsimile & email

Mr. Warren M. Fitzgerald, Jr.
Attorney at Law
6415 W. Montgomery
Houston, Texas 77091

Re: C.A. No. 4:07-cv-04021; *Stewart, et al. v. City of Houston, et al.*, In the
United States District Court for the Southern District of Texas, Houston
Division.

Dear Warren:

As you will recall, under Federal Rule of Civil Procedure 26(b)(4)(c)(i), your clients are obligated to pay the costs associated with deposing Defendants' expert witnesses and you agreed that your clients would, in fact, pay such costs. We have received an invoice from Mr. Brennan which sets forth his charges for his time and expenses incurred in preparing for and appearing at his deposition. I have attached a copy of this invoice for your review. Based upon the requirements of Rule 26(b)(4)(c)(i) and your clients' agreement, your clients are responsible for paying **\$1,469.00** to Mr. Brennan. Please remit your clients' payment, made payable to my firm, at your earliest convenience and we will remit payment to Mr. Brennan.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

FELDMAN, ROGERS, MORRIS & GROVER, LLP

Clay T. Grover

CTG:hr
\\CIT01004\\...\\104j
Attachment

c: Mr. Athill Muhammad (w/attach.)

Via facsimile & email

San Antonio Office
517 Soledad Street, San Antonio, Texas 78205
Phone: (210) 406-4100 Fax: (210) 406-4114

East Texas Office
222 North Mound, Suite 2, Nacogdoches, Texas 75961
Phone: (936) 569-2880 Fax: (936) 569-2802

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F.1

May 19 2009 14:47

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TO	FROM
Warren M. Fitzgerald, Jr. Athill Muhammad	Clay T. Grover
COMPANY	DATE
	May 19, 2009
FAX NUMBER	TOTAL NO. OF PAGES INCLUDING COVER
713/429-4121 713/807-8167	3
PHONE NUMBER	SENDER'S CASE MATTER NUMBER
	CIT01/004
RE	SENDER'S INITIALS
Stewart, et al. v. City of Houston, et al.	HR

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NOTES/COMMENTS

Please see attached correspondence from Mr. Grover.

Hildy

Hildy Rodriguez

From: Hildy Rodriguez
Sent: Tuesday, May 19, 2009 2:32 PM
To: 'warren.fitzlaw@gmail.com'; 'amuhammadlaw@aol.com'
Cc: Clay Grover; Jonathan Brush; Heather Balderaz
Subject: Stewart, et al. v. City of Houston, et al.
Importance: High
Attachments: 104j Fitzgerald (invoice).pdf; image002.emz

Please see attached correspondence from Clay Grover.

Hildy



Hildegard Rodriguez
Legal Assistant to Clay T. Grover
FELDMAN, ROGERS, MORRIS & GROVER, L.L.P.
5716 Westheimer, Suite 1200
Houston, Texas 77057
Main: 713-960-6000
Direct: 713-960-6035
Facsimile: 713-960-6025
Website: www.feldmanrogers.com

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5/19/2009



FELDMAN ROGERS

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www.feldmanrogers.com

CLAY T. GROVER
Direct Dial: (713) 960-6033
cgrover@feldmanrogers.com

May 29, 2009

Via facsimile & email

Mr. Warren M. Fitzgerald, Jr.
Attorney at Law
6415 W. Montgomery
Houston, Texas 77091

Re: C.A. No. 4:07-cv-04021; *Stewart, et al. v. City of Houston, et al.*, In the
United States District Court for the Southern District of Texas, Houston
Division.

Dear Warren:

As you will recall, under Federal Rule of Civil Procedure 26(b)(4)(c)(i), your clients are obligated to pay the costs associated with deposing Defendants' expert witnesses and you agreed that your clients would, in fact, pay such costs. We have received an invoice from Milton D. Moore, M.D. which sets forth his charges for his time and expenses incurred in preparing for and appearing at his deposition. I have attached a copy of this invoice for your review. Based upon the requirements of Rule 26(b)(4)(c)(i) and your clients' agreement, your clients are responsible for paying \$4,800.00 to Dr. Moore. Please remit your clients' payment, made payable to my firm, at your earliest convenience and we will remit payment to Dr. Moore.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

FELDMAN, ROGERS, MORRIS & GROVER, L.L.P.

Clay T. Grover

CTG:hr
VCIT01004V.11041
Attachment

c: Mr. Athill Muhammad (w/attach.)

Via facsimile & email

San Antonio Office
517 Soledad Street, San Antonio, Texas 78205
Phone: (210) 406-4100 Fax: (210) 406-4114

East Texas Office
222 North Mound, Suite 2, Nacogdoches, Texas 75961
Phone: (936) 569-2880 Fax: (936) 569-2802

Moore Unique Skin Care LLC
 9350 Kirby Drive, Suite 100 D
 Houston TX 77054

Invoice

Date	Invoice #
5/5/2009	33682

Bill To	
FELDMAN & RODGERS, LLP 5718 WESTHEIMER #1200 HOUSTON, TX 77057	

Ship To

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Due on receipt		5/5/2009			
Quantity	Item Code	Description	Price Each	Amount		
1	50-0-10000	SERVICE FEES 1 HOUR MEETING WITH T. GROVER FOR DEPOSITION ON 4/13/09	400.00	400.00		
2	50-0-10000	SERVICE FEES 2 HOURS PREPARATION, REVIEW & RESEARCH ON 4/14/09	400.00	800.00		
6	50-0-10000	SERVICE FEES 6 HOURS DEPOSITION MEETING ON 4/15/09	600.00	3,600.00		
		SALES TAX	0.00%	0.00		
			Total	\$4,800.00		

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P.1

May 29 2009 15:50

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Stewart, et al. v. City of Houston, et al.	HR

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ FYI

NOTES/COMMENTS

Please see attached correspondence from Mr. Grover.

Hildy

Hildy Rodriguez

From: Hildy Rodriguez
Sent: Friday, May 29, 2009 3:33 PM
To: 'warren.fitzlaw@gmail.com'; 'amuhammadlaw@aol.com'
Cc: Clay Grover; Jonathan Brush
Subject: Stewart, et al. v. City of Houston, et al.
Attachments: 104I Fitzgerald (Dr. Moore's invoice).pdf; image002.emz

Gentlemen:

Please see attached correspondence from Clay Grover, dated May 29, 2009, regarding the above-referenced matter.

Hildy



Hildegard Rodriguez
Legal Assistant
FELDMAN, ROGERS, MORRIS & GROVER, L.L.P.
5718 Westheimer, Suite 1200
Houston, Texas 77057
Main: 713-960-6000
Direct: 713-960-6035
Facsimile: 713-960-6025
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5/29/2009

EXHIBIT A-6



FELDMAN ROGERS

FELDMAN, ROGERS, MORRIS & GROVER, L.L.P.
ATTORNEYS AT LAW

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HOUSTON, TEXAS 77057
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www.feldmanrogers.com

CLAY T. GROVER
Direct Dial: (713) 960-6033
cgrover@feldmanrogers.com

June 16, 2009

Via Facsimile 713/429-4121

Mr. Warren M. Fitzgerald, Jr.
Attorney at Law
6415 W. Montgomery
Houston, Texas 77091

Re: C.A. No. 4:07-cv-04021; *Shelby Stewart, Kenneth Perkins, Adrian Wright, and Raul Collins v. City of Houston and Harold Hurtt*, In the United States District Court for the Southern District of Texas, Houston Division.

Dear Warren:

I am writing in follow-up to my correspondence of May 19 and May 29 regarding the invoices for the depositions of Defendants' expert witnesses, Mr. Brennan and Dr. Moore. As you will recall, you are obligated to pay these charges under both Federal Rule of Civil Procedure 26(b)(4)(c)(i) and your agreement. To date I have not received payment for either invoice. Please immediately remit payment for these invoices to my office. If I have not received payment for these invoices by June 29, 2009 at 5 p.m., which is thirty (30) days from the date of my last letter, I shall have no choice but to file a Motion for Sanctions with the Court.

If you have any questions please do not hesitate to contact me.

Very truly yours,

FELDMAN, ROGERS, MORRIS & GROVER, LLP



Clay T. Grover

CTG:hb
VCIT01004V...A104c

cc: Mr. Athill Muhammad

Via Facsimile 713/807-8167

San Antonio Office:
517 Soledad Street, San Antonio, Texas 78205
Phone: (210) 406-4100 Fax: (210) 406-4114

East Texas Office:
222 North Mound, Suite 2, Nacogdoches, Texas 75961
Phone: (936) 569-2880 Fax: (936) 569-2802

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P.1

Jun 16 2009 17:16

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PHONE NUMBER	SENDER'S CASE MATTER NUMBER
	CTT01/004
RE:	SENDER'S INITIALS
<i>Stewart, et al. v. City of Houston, et al.</i>	HB

☐ URGENT
 ☐ FOR REVIEW
 ☐ PLEASE COMMENT
 ☐ PLEASE REPLY
 ☐ FYI

NOTES/COMMENTS:

Please see attached correspondence from Mr. Grover.

Heather

Heather Balderaz

From: Heather Balderaz
Sent: Tuesday, June 16, 2009 5:15 PM
To: 'warren.fitzlaw@gmail.com'
Cc: Jonathan Brush; Clay Grover; Hildy Rodriguez
Subject: Shelby Stewart, Kenneth Perkins, Adrian Wright, and Raul Collins v. City of Houston and Harold Hurt
Attachments: 119 Fitzgerald.pdf

Re: C.A. No. 4:07-cv-04021; *Shelby Stewart, Kenneth Perkins, Adrian Wright, and Raul Collins v. City of Houston and Harold Hurt*, In the United States District Court for the Southern District of Texas, Houston Division.

Attached please find correspondence in the above-referenced matter.

Heather Balderaz
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